

MAY 15 2008

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U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

K-SWISS INC., a Delaware corporation,

Plaintiff - Appellant,

v.

GTFM, INC., a New York corporation,

Defendant - Appellee.

No. 06-56612

D.C. No. CV-04-08890-RJK

MEMORANDUM^{*}

Appeal from the United States District Court
for the Central District of California
Robert J. Kelleher, District Judge, Presiding

Argued and Submitted May 6, 2008
Pasadena, California

Before: W. FLETCHER and GOULD, Circuit Judges, and POLLAK,^{**}
District Judge

K-Swiss Inc. (K-Swiss) appeals the district court's holding that the district court lacks personal jurisdiction over GTFM, Inc. (GTFM). We reverse and remand for jurisdictional discovery.

^{*} This disposition is not appropriate for publication and is not precedent except as provided by Ninth Circuit Rule 36-3.

^{**} The Honorable Louis H. Pollak, Senior United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

In response to GTFM’s motion to set aside the default judgment, K-Swiss requested the opportunity to conduct jurisdictional discovery. The district court did not explicitly rule on K-Swiss’s request. Instead, it simply granted GTFM’s motion, holding that it lacked personal jurisdiction over GTFM.

“We review de novo the district court’s determination that it does not have personal jurisdiction over” the defendant. *Pebble Beach Co. v. Caddy*, 453 F.3d 1151, 1154 (9th Cir. 2006). Where, as here, “the district court only implicitly denie[s] the request to authorize discovery,” we review the district court’s failure to allow discovery de novo. *Cal. Dep’t of Soc. Servs. v. Leavitt*, No. 06-56136, 2008 WL 1836725, at *4 & n.9 (9th Cir. Apr. 25, 2008). Because the district court did not make any factual findings in support of its conclusion that it lacks personal jurisdiction over GTFM, we examine the record de novo. *Cf. Rano v. Sipa Press, Inc.*, 987 F.2d 580, 587 (9th Cir. 1993).

K-Swiss has had no opportunity to conduct jurisdictional discovery. Based on the record before this court, we conclude that “pertinent facts bearing on the question of jurisdiction are in dispute.” *See Am. W. Airlines, Inc. v. GPA Group, Ltd.*, 877 F.2d 793, 801 (9th Cir. 1989). We further conclude that the record was not “sufficiently developed for the district court to rule on all . . . issues pertaining to jurisdiction.” *Cf. Pebble Beach*, 453 F.3d at 1160. We therefore direct the

district court to allow K-Swiss to conduct appropriate jurisdictional discovery. We reverse and remand for further proceedings consistent with this memorandum.

REVERSED and REMANDED.